

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

QIAN IBRAHIM ZHAO,	§	
Petitioner,	§	
	§	
v.	§	CIVIL ACTION NO. H-10-0328
	§	
ERIC HOLDER, et al.,	§	
Respondents.	§	

MEMORANDUM AND ORDER ON DISMISSAL

Before the Court is a petition for writ of habeas corpus filed pursuant to 28 U.S.C. § 2241 on February 2, 2010, by petitioner Qian Ibrahim Zhao. Petitioner is currently detained by the Department of Homeland Security, Bureau of Immigration and Customs Enforcement (ICE) in the Houston Service Processing Center, awaiting removal to China.

For the reasons to follow, the Court will dismiss the petition.

DISCUSSION

Petitioner, a Chinese citizen of East Turkistani ethnicity, graduated from the University of Houston. Zhao v. Holder, No.09-60083 (5th Cir. 2009). He visited China and later re-entered the United States. Id. After receiving notice that he was removable for want of a valid entry document, petitioner was detained by ICE on March 5, 2008. Zhao v. Holder, Civil Action No.4:08cv3595 (S.D. Tex.) (Docket Entry No.1). Petitioner filed an application for asylum, for withholding removal, and for relief under the

Convention Against Torture. Zhao v. Holder, No.09-60083 (5th Cir. 2009). The Immigration Judge ("IJ") denied relief and ordered him removed. Id. On December 8, 2008, petitioner sought federal habeas relief from his detention. Zhao v. Holder, Civil Action No.4:08cv3595 (Docket Entry No.1). On January 29, 2009, the Board of Immigration Appeals affirmed the IJ's findings on all issues. Id. On February 6, 2009, petitioner filed a Petition for Review in the Fifth Circuit Court of Appeals. Id. On June 25, 2009, this Court ordered Civil Action No.4:08cv3595 stayed and administratively closed pending completion of petitioner's appeal. Id. (Docket Entries No.34, No.35). Petitioner filed an appeal from the Court's order; the appeal is still pending. Zhao v. Holder, No.09-20419 (5th Cir.).

On June 29, 2009, the Fifth Circuit granted petitioner's motion for stay of deportation pending review. (Docket Entry No.1). On July 9, 2009, petitioner filed a second federal habeas petition pursuant to 28 U.S.C. § 2241, seeking release from ICE detention. Zhao v. Holder, Civil Action No.4:09cv2192 (S.D. Tex. Dec. 28, 2009). On December 18, 2009, the Fifth Circuit denied petitioner's Petition for Review of an Order of the Board of Immigration Appeals. Zhao v. Holder, No.09-60083 (5th Cir. 2009). On December 28, 2009, this Court dismissed Civil Action No.4:09cv2192 as wholly duplicative of Civil Action No.4:08cv3595. Id. (Docket Entry No.13).

On February 3, 2010, petitioner filed the present habeas action, challenging his detention. (Docket Entry No.1). The present petition is also duplicative of Civil Action No.4:08cv3595, pending in this Court before Judge David Hittner. Petitioner, however, complains that he must file another habeas petition challenging his detention because the Fifth Circuit has denied his motion to supplement the record in Civil Action No.4:08cv3595. (Id.). Petitioner's complaint is without merit. The Fifth Circuit's Order of January 6, 2010, does not deny petitioner the opportunity to move to supplement the record in Civil Action No.4:08cv3595, pending in district court. Zhao v. Holder, No.09-20419. The Order denies petitioner's motion to supplement the appellate record with more exhibits. Id.


CONCLUSION

For the foregoing reasons, it is

ORDERED that Petitioner Qian Ibrahim Zhao's Petition for Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2241 is DISMISSED, without prejudice, as duplicative. All pending motions are DENIED.

The Clerk will enter this Order and provide a correct copy to all parties.

SIGNED at Houston, Texas, on this 10TH day of February, 2010.


EWING WERLEIN, JR.
UNITED STATES DISTRICT JUDGE